

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA) CAUSE NO. 3:04-CR-240-P
 (
vs.)
 (MAY 27, 2009
) DALLAS, TEXAS
MOHAMMAD EL-MEZAIN (9:00 A.M.

SENTENCING

BEFORE THE HONORABLE JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
1100 COMMERCE, 3RD FLOOR
DALLAS, TEXAS 75242
BY: MR. JIM JACKS
MR. BARRY JONAS
MS. ELIZABETH SHAPIRO
MR. WALT JUNKER

FOR THE DEFENDANT: LAW OFFICE OF JOSHUA L. DRATEL
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NEW YORK, NEW YORK 10005
BY: MR. JOSHUA DRATEL
MR. AARON J. MYSLIWIEC

1 THE COURT: Call the case against Mohammad
2 El-Mezain.

3 | Mr. Dratel and Mr. Mysliwiec, you are ready to proceed?

4 MR. DRATEL: Yes, Your Honor.

5 THE COURT: And Mr. Jonas, you are ready to proceed
6 on this case?

7 MR. JONAS: Yes, sir.

8 THE COURT: If you will come up with your client.

9 MR. DRATEL: Your Honor, due to Mr. El-Mezain's
10 position, he can't stand for any period of time. If he can
11 sit -- I am happy when I am speaking to be at the podium, but
12 in terms of the initial allocution I will stand next to him.

13 THE COURT: That is fine. Let's take a short
14 recess. Let's take about a five-minute break, and we will
15 continue.

16 (Brief recess.)

17 THE COURT: Mr. Dratel, are you ready to proceed?

18 MR. DRATEL: Yes, Your Honor.

19 THE COURT: And Mr. El-Mezain, you were convicted by
20 a jury back on November the 4th, 2008 on Count 1, conspiracy
21 to provide material support to a foreign terrorist
22 organization.

23 We are now here on a sentencing hearing. The Probation
24 Office has prepared a presentence report, then an addendum to
25 that presentence report, and then this morning provided your

1 counsel with a second addendum to the presentence report. The
2 addendums were prepared in response to objections filed by
3 your attorney.

4 And have you had the opportunity to review the
5 presentence report with your attorneys, Mr. El-Mezain?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And do you understand all of
8 the information that is contained in these presentence
9 reports?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And Mr. Dratel, you have gone over these
12 presentence reports and the addenda with your client?

13 MR. DRATEL: Yes. Although obviously to the second
14 addendum we have not had an opportunity in that regard.

15 THE COURT: And you satisfied, at least with respect
16 to the first addendum and the presentence report, Mr.
17 El-Mezain understands all of the information in there?

18 MR. DRATEL: Yes, Your Honor.

19 THE COURT: And then Mr. Jonas, the Government had
20 no objections to the presentence report in this case as well?

21 MR. JONAS: That is correct, sir.

22 THE COURT: And Mr. Dratel, you filed a number of
23 objections. Do you wish to address those beyond what you have
24 in writing?

25 MR. DRATEL: No, Your Honor. Just the three that

1 affect the Guidelines. And I know that obviously the Court
2 has reached certain conclusions with respect to them, and I
3 just want to sort of put them in the context of Mr. El-Mezain
4 and not revisit the argument that occurred before.

5 I would, of course, adopt all co-Defendants' arguments,
6 both before and afterwards, to the extent that they benefit
7 Mr. El-Mezain.

8 The terrorism enhancement, I just want to point out also
9 in the context of Mr. El-Mezain, obviously, that the
10 Government's sentencing memorandum focuses -- when it talks
11 about the coercion and intimidation element of the terrorism
12 enhancement, it is the Defendant's conduct that must do that,
13 not the FTO, the foreign terrorist organization that does
14 that, but it is really the Defendants' conduct. And I don't
15 believe there has been any evidence with respect Mr.
16 El-Mezain, particularly within the confines of the statutory
17 period that is relevant to him, which is after October 8,
18 1997, which is the statute --

19 THE COURT: And you are speaking of the 3A1.4
20 enhancement?

21 MR. DRATEL: Yes. And so I think with respect to
22 Mr. El-Mezain there has not been that proof, and as a result
23 the terrorism enhancement should not apply to him.

24 If you want I can go over the other two --

25 THE COURT: Sure. Why don't you go ahead and go

1 over all --

2 MR. DRATEL: On the obstruction, there are two parts
3 of the obstruction that have been raised in the presentence
4 report. The first is with respect to the 302s, you know, the
5 interview with the FBI, which I think doesn't qualify under
6 the application notes, and certainly I think the addendum is
7 completely off base or there is no basis for the claim in the
8 addendum that somehow that Abu Marzook relates to an element
9 in Count 1. I don't think that is the case.

10 With respect to the deposition, we have obviously set it
11 out in paper, and also with respect to the interviews, and I
12 am just sort of putting those in more specific context. With
13 respect to the depositions, we have set it in writing, but I
14 just want to point out again that the 2003 deposition does not
15 state a time frame for the answers that the presentence report
16 relies on with respect to Mr. Abu Marzook in terms of when
17 these contacts and what the frequency of contacts was over the
18 time. We are talking eight years since Mr. Abu Marzook was in
19 the United States, or at least he was in custody for two
20 years, but since he was available in the United States to
21 speak to, and that it is also I think telling that in the
22 entirety of the wiretap from '93 to 2003 of Mr. El-Mezain's
23 lines there are no conversations between he and Mr. Marzook.

24 So I don't think there can be a finding that -- I don't
25 think there can be the necessary finding of intentionality as

1 opposed to mistake, failure of memory, and other things that
2 are factors in the obstruction because it is a very different
3 guideline than many others because it really does put the
4 burden on the Government to demonstrate to the Court that in
5 fact it was willing and -- knowing and willful as opposed to
6 the product of either mistake or the failure of the questioner
7 to be precise. So I think that also would negate that
8 guideline for Mr. El-Mezain.

9 With respect to leadership role, again, the leadership
10 role is about offense conduct of the Defendant, not the
11 Defendant's position in an organization. So the fact that Mr.
12 El-Mezain was a founder of Holy Land when it was perfectly
13 legal in terms of whatever its activities were, that would not
14 be a leadership role in the context of the offense conduct.
15 And again, if you look at the evidence there is no evidence
16 about Mr. El-Mezain's activity or involvement in any of the
17 decision-making about where specific money went to specific
18 zakat committees.

19 Essentially he is a fundraiser and a founder, so he is
20 not part of that decision-making process, and I think that it
21 would be inappropriate to assess a leadership role in the
22 offense conduct because his role in the organization had
23 nothing to do with the offense conduct.

24 In addition, the only project that Mr. El-Mezain is
25 actually personally connected to in the evidence is the Dar

1 Salam project, the hospital, which is not part of the
2 Government's proof and not part of the conspiracy. So in that
3 context I think the leadership role enhancement would be
4 inappropriate, whether it be 4, 3, 2, or 1. Obviously we
5 would be arguing against the 4, but I don't think it applies
6 at all.

7 So those are the three that affect the Guidelines.
8 Obviously we made the others in writing, and we stand by
9 those.

10 THE COURT: Thank you.

11 Mr. Jonas.

12 MR. JONAS: Your Honor, if Your Honor is going to
13 apply the same rulings you made with the Defendant Abu Baker
14 to Defendant El-Mezain, as the Government thinks you should
15 because they are the same course of conduct, then there is
16 really no need to make more arguments. I will just rely upon
17 the arguments we made this morning.

18 THE COURT: He has made some specific arguments here
19 that just apply to Mr. El-Mezain, specifically the obstruction
20 and then the leadership role. I think the 3A1.4, he made some
21 slightly different arguments, but I think the application of
22 that is going to work the same in all Defendants. But he has
23 made some specific arguments as far as the application of
24 those enhancements for the obstruction of justice and the
25 leadership role for Mr. El-Mezain. If you want to address

1 those.

2 MR. JONAS: I will briefly address those, and we
3 addressed these in our papers so I won't belabor the point.

4 With regard to the leadership role, Mr. Dratel is arguing
5 that his role with the HLF, the Holy Land Foundation, was not
6 the same as a leadership role for the offense conduct. They
7 are one and the same. The HLF was created, as Your Honor has
8 acknowledged, for the purpose of supporting Hamas. The
9 Defendant El-Mezain is one of the three founders of the Holy
10 Land Foundation. He was an officer or director. He held a
11 high position in that organization.

12 THE COURT: What about post-conduct? I think
13 Mr. Dratel's argument is a lot of that is pre-designation, and
14 so his offense conduct didn't begin until 1997 with that
15 designation in 1997. And so he is saying you have to focus on
16 his role at that time.

17 MR. JONAS: He was chairman of the board until 1999
18 when he became I believe it was director of endowments, and I
19 think Defendant Ghassan Elashi became chairman of the board at
20 that point. Once he became director of endowments, then he
21 started receiving a salary. If Your Honor recalls, we played
22 a phone call between Defendant Shukri Baker and Omar Ahmed
23 where they talked about how much money the Defendant El-Mezain
24 should receive for his past fundraising activity in 1999,
25 because at that point he was going to receive a salary from

1 that point forward. So he always maintained a high position
2 within the organization post-1997.

3 From 1997 through 1999 when he lived in New Jersey, he
4 was directly controlling the activity of Abdulrahman Odeh, as
5 was brought out in trial. We noted the transcript page in our
6 sentencing memorandum. So he controlled the activity of
7 another individual involved in the conspiracy. So I think he
8 clearly played a role from 1997 forward that started prior to
9 that time period and just continued on up until the time that
10 the Holy Land Foundation was shut down.

11 As the Government showed during the trial, his rank in
12 the Palestine Committee, as established by the Elbarasse
13 documents show that he is was fairly high up there as a member
14 of that committee. Again, that committee continued on
15 throughout the years in the course of the conspiracy.

16 So even though Mr. Dratel is focusing on the time period
17 in 1997 forward, his activities prior to 1997 continued and
18 his role in this case, his role in the Holy Land Foundation,
19 continued on and forward through 1997 up through 2001.

20 With regard to the obstruction of justice, and I will
21 focus for a moment on the deposition, the deposition that took
22 place in 2003, we highlighted certain statements in that
23 deposition, which was Government's Exhibit El-Mezain
24 Deposition, in our sentencing memo we highlighted certain
25 statements that were patently false, along the same lines as

1 the Defendant Abu Baker's statements. They were in effect one
2 and the same. The two of them were both lying about Palestine
3 Committee, the relationship between the HLF and other
4 organizations that were part of the committee, including
5 individuals, the relationship with Abu Marzook, the
6 Defendant's own relationship with Abu Marzook, which the
7 Government showed was extensive.

8 So I think the Defendant's false statements in that
9 deposition mirror the false statements of Defendant Abu Baker
10 and both the leadership role, four levels for leadership role
11 and two levels for obstruction should apply.

12 THE COURT: Thank you.

13 Mr. Dratel?

14 MR. DRATEL: I just want to point out, with respect
15 to leadership, Mr. Odeh ran the New Jersey office. Mr.
16 El-Mezain was not a part of the New Jersey office. He
17 happened to live in New Jersey. But even that would still
18 only be one person for purposes of management and supervision,
19 which wouldn't qualify for leadership enhancement.

20 When you talk about the Palestine Committee, there is no
21 evidence after 1997 of Palestine Committee activity that Mr.
22 El-Mezain is involved in one way or the other. I don't think
23 there evidence of Palestine Committee activity after the early
24 '90s from the Elbarasse documents. So in that context I don't
25 think that proves it. I think that we are still stuck in the

1 same place.

2 THE COURT: Okay. Thank you.

3 And I am going to overrule those objections. I believe
4 Probation correctly calculated and correctly applied those
5 enhancements.

6 With respect to the deposition testimony I am going to
7 find that Mr. El-Mezain did give materially false -- made
8 materially false statements that were made and given with the
9 intent to obstruct the investigation that he knew -- the
10 criminal investigation that he knew was already underway and
11 ongoing at that time.

12 The leadership, Mr. El-Mezain was one of the founders,
13 was one of the creators that helped create the Holy Land
14 Foundation for the purpose of supporting Hamas. And while the
15 roles changed among Mr. Baker, El-Mezain, and Mr. Elashi over
16 time, it always appeared from the evidence consistently
17 throughout the entire time of the conspiracy through the time
18 that it was shut down Mr. El-Mezain was one of the leaders of
19 the Holy Land Foundation, was one of the leaders in the bigger
20 Palestine Committee enterprise that was ongoing at that time.
21 So I think the enhancements are properly given. Those
22 objections are overruled.

23 And the 12-level enhancement for 3A1.4, I think that is
24 also properly given. And as I stated previously in regards to
25 the previous sentencing, that section applies whether we are

1 using the 2001 or the 2002 manual. The Guidelines section
2 states that if the offense is a felony that involved or was
3 intended to promote a federal crime of terrorism, and so this
4 underlying -- Well, the money laundering offense was clearly,
5 the evidence showed, was intended to promote a federal crime
6 of terrorism, the 2339B of which some of the other Defendants
7 were convicted. And I think the prerequisites and the
8 requirements of that section are met by the evidence in the
9 case. So that application is also properly given. I will
10 overrule the objections that affect the calculation of the
11 Guidelines.

12 Any other objections that you wish to address?

13 MR. DRATEL: No, Your Honor, other than what we have
14 already submitted in writing.

15 THE COURT: And you are resting on those.

16 MR. DRATEL: Yes.

17 THE COURT: And with that, then, I will accept the
18 findings of the Probation Office as contained in the
19 presentence report, also in the addendum to the presentence
20 report. I will adopt those as the findings of the Court in
21 this case.

22 We do have an offense level of 43, Criminal History
23 Category of VI because of the terrorism enhancement with a
24 range of life, but we have a maximum sentence here, statutory
25 maximum of 15 years, 180 months. So that will be the maximum

1 that the Court will consider in this case.

2 Mr. Dratel, I will hear from you.

3 MR. DRATEL: I think the place to start is the
4 language of the statute 3553(a), which Ms. Hollander mentioned
5 so I won't go into it in significant detail, but just
6 sufficient but not greater than necessary is the important
7 language that the Supreme Court has focused on, which is what
8 the sentence should be; sufficient but not greater than
9 necessary to achieve the purposes of sentencing set forth in
10 3553(a)(2).

11 And I think in this case with respect to Mr. El-Mezain,
12 aside from what we have submitted to the Court, I know we
13 submitted voluminous materials to the Court and I am not going
14 to go through them in great detail, but I just want to
15 summarize them and essentially distill it to two elements that
16 make this case different with respect to Mr. El-Mezain and
17 compel a sentence that is substantially below the statutory
18 maximum, and in fact should be time served, but at least
19 substantially below the statutory maximum.

20 The first element is the unique conduct that is at issue
21 in this case, and the second is the extraordinary Defendant
22 who stands before the Court for sentencing.

23 And with respect to the conduct, the statute, 2339B that
24 he is convicted of, the only statute that he is convicted of,
25 the structure of the statute and the construction of the

1 statute I think are important because the intent element is so
2 important, because -- We lost this legal issue in litigating
3 before the Court, so I am not trying to relitigate the
4 question of liability. I just want to point out that with
5 respect to liability, the Defendant is guilty if the Defendant
6 knowingly provides material support to a designated entity.
7 Now, it doesn't matter what the Defendants' motivation is. So
8 his motivation or his intent in terms of what he is trying to
9 do can be bad, it could be benign, or it could even be
10 benevolent. That doesn't matter for purposes of liability.
11 If he knowingly provides it to a terrorist organization, it is
12 a crime. But it does matter with respect to sentencing as to
13 what that underlying motivation is.

14 That is what 3553(a) and the factors that the Court must
15 consider, that is what they are all about is looking at the
16 conduct beyond just the offense of conviction, which is all
17 just about the Guidelines. And that is what *Booker* is all
18 about, an advisory Guideline system as opposed to a mandatory
19 Guideline system.

20 Otherwise, really, if you are just looking at the offense
21 of conviction, and it is really just a mandatory Guideline
22 system recast in another form and which would violate the
23 Sixth Amendment.

24 This case is completely unlike other material support
25 cases in two ways at least. The first is that this is a case

1 of money provided for charity that went to charity. So we
2 have money that was given for the purpose of providing
3 essential goods and services for needy persons, and it went to
4 those needy persons. This distinguishes this case from other
5 material support cases which involve the provision -- the
6 material support in those cases, the provision of services
7 such as someone going to a training camp, someone offering
8 their services to Al-Qaeda.

9 There is a case that we mentioned, the *Tarik Shah* case,
10 who offered to provide martial arts training to Al-Qaeda. He
11 received a sentence of 15 years. That is a knowing provision
12 of material support for the purpose of supporting violent
13 conduct.

14 There are other cases, weapons, the *Arif* case, missiles,
15 15 year sentence. Equipment, expertise, those are the types
16 of things that are the hallmark of every material support case
17 except this one.

18 The other way that this case is so different than other
19 cases is the material support is indirect. It doesn't go
20 directly to Hamas. It goes to organizations that the
21 Government says are operated for the benefit of Hamas; not
22 necessarily part of Hamas proper, but operated in an affiliate
23 form for Hamas. And that is important also, because the
24 attenuation from the terrorist organization is another unique
25 aspect of this case.

1 There are some other factors that make this case unique,
2 and I will summarize them. Ms. Hollander went into some
3 detail, and of course I adopt those arguments. Some of the
4 organizations that received money in the indictment are the
5 same as the U.S. government provided money to.

6 Dar Salam, that is one aspect of this case that we know
7 Mr. El-Mezain was closely involved in. That is not in the
8 indictment.

9 Mr. El-Mezain's acquittals I think should be factored
10 into the equation, because if you look at the nature of the
11 conduct and the nature -- it is really just extraordinarily
12 narrow at this point, and the jury has found him not guilty of
13 all the other conduct.

14 The hearts and minds theory of the Government also
15 attenuates this case from the ordinary case. This is not
16 about a case where things went directly to a terrorist
17 organization. The Government's theory, which is unique among
18 material support cases as well, is that Mr. El-Mezain did what
19 he did so that Hamas could win the hearts and minds. It is
20 not even a direct benefit to Hamas. It is an indirect benefit
21 to Hamas, because Hamas gets this sort of secondary benefit.
22 It is not a direct primary benefit. It is a secondary benefit
23 down the road that Hamas wins the hearts and minds.

24 And they placed a lot of evidence, the Government in its
25 sentencing memorandum places a lot of evidence on the Bruce

1 Hoffman's testimony, and they point out there was no cross
2 examination. There is just a fundamental fallacy in Mr.
3 Hoffman's thesis and his testimony, and I will explain why he
4 wasn't cross examined as well. But he says, "Successful
5 terrorism groups have social service networks, and it is
6 essential."

7 Well, the most successful terrorist organization in the
8 world today, Al-Qaeda, does not have any social service
9 network. It is a fallacy that that is required, that they are
10 somehow connected. And obviously we weren't going to cross
11 examine on the issue of Al-Qaeda when the Court had already
12 said that is not part of the case, and we are not going to be
13 baited into making that distinction to open that door.

14 All of these factors make this case and the conduct in it
15 completely outside the heartland. And whether it is a formal
16 departure or whether it is under 3553(a), I think this case
17 stands unique and Mr. El-Mezain's position in it stands
18 unique, because if you look at the amount of conduct with
19 respect to Mr. El-Mezain, what came into evidence and what
20 came in post 1997, the actual time period of the statute and
21 what came in pre-'97 I think that is also a factor.

22 So I think all of those things really take the Guidelines
23 and put them in a special place for this case where they have
24 almost no meaning. And there are a couple of reasons why as
25 well, because -- I am going to address something that I think

1 is lurking out there in sentencing in the context of Mr.
2 El-Mezain's position compared to the other Defendants, which
3 is he has this high Guidelines computation, assuming --
4 understanding that the Court has already ruled on those
5 issues, and that he is subject to a 15-year maximum despite
6 the fact that he has got a life Guidelines range, and there
7 might be a sense that there is already a significant discount
8 in that context.

9 But to do that and to give credence to that argument I
10 think would be the same as presuming the Guidelines level to
11 be reasonable, which it is not, and the Court is not permitted
12 to do, as the Supreme Court has explicitly said. I think you
13 have to start with the offense conduct by the Defendant and
14 who the Defendant is, and that is where I am going to get to
15 now, which is the extraordinary Defendant in the case.

16 3553(a) has elements that the Government simply just
17 refused to address. And it is not surprising, because the
18 Government and the Assistants in this case, they are hamstrung
19 by their own policy which is the Ashcroft memo which dates
20 back to 2002 or 2003 which says that the Government has to ask
21 for a Guidelines sentence, at least if not above, in every
22 case. So it is not surprising that the Government can't
23 address that in a principled way because it is not permitted
24 to consider those when it talks about sentencing.

25 The Government memo is all about conduct. It is all

1 about one factor. It is all about the Guidelines really. It
2 is not about all the other factors of 3553(a). In fact, at
3 the end they say there are no grounds for departure.
4 Departure is a Guidelines concept. It is not a 3553(a)
5 concept. 3553(a), the other elements of it, the other factors
6 operate independent from the Guidelines.

7 And if I may, Your Honor?

8 THE COURT: Certainly.

9 MR. DRATEL: As the Court is aware, in fact Mr.
10 El-Mezain's background is crucial in sentencing. It is not
11 just the offense, it is the offender, when you are talking
12 about sufficient but not greater than necessary. And 3553(a)
13 makes that clear.

14 There are 275 letters that we have submitted on behalf of
15 Mr. El-Mezain, Mr. El-Mezain specifically. There is more than
16 275. I received another six last night. And I don't think it
17 matters whether it is 275 or 280 or 286 or 300, the volume is
18 there for the Court to see and to consider.

19 There are another 280 that came from the Dallas community
20 just in support of Holy Land and Mr. El-Mezain generally. We
21 didn't need to submit them because the nearly 300 we have
22 submitted are about Mr. El-Mezain in particular.

23 All of these letters demonstrate the personal support,
24 the support Mr. El-Mezain has in the community personally and
25 also at large in the context that the work that Holy Land did

1 and the work that Mr. El-Mezain has done outside of Holy Land.

2 I just -- Just to give an example of the letters, among
3 the letters that we did not quote from in the sentencing
4 letter, we only quoted from I think from 31 of the nearly 300
5 that we had on his behalf, but there is one from someone in
6 San Diego who is working as an engineer in the U.S., and he is
7 a recent immigrant in the last decade to the United States.
8 He knows Mr. El-Mezain as an emam and leader of the community.
9 And he says, "Even though he had pain in his leg Sheikh Abu
10 Ibrahim"--that is Mr. El-Mezain--"had always a smile on his
11 face. I have never seen him getting angry. He was very
12 affectionate to all of us, including the kids. My
13 six-year-old son is very fond of him.

14 "Sheikh Abu Ibrahim used to give us short talk after the
15 early morning and night prayers. In his talk he used to
16 encourage us to be obedient to God. He always used to
17 encourage us to do good deeds, obey and respect the parents,
18 help the poor and needy.

19 "Sheikh Abu Ibrahim was always present for raising funds
20 for the poor Muslims all over the world and for the local
21 school, masjid, and other Islamic instructions. On Sunday
22 mornings he always brought traditional Palestine food and we
23 would have a potluck breakfast.

24 "We all miss him and hope and pray he will be with us
25 soon."

1 That is indicative of the types of letters, whether
2 quoted or not.

3 Mr. El-Mezain is someone obviously without a criminal
4 record prior to this case. Thirty years of service in his
5 community, and if you look at the letters and the people, not
6 only the depth of the people who have written and their
7 comments about Mr. El-Mezain, but also the breadth and scope
8 of it, people who talk about his work in interfaith
9 activities, his work in the community, his work -- and his
10 work is micro and macro. It is micro on a fundamental level
11 as an imam with families and individuals, helping them solve
12 their problems, as he has done in all the communities that he
13 has been in, but also in the macro in the sense of making his
14 community part of the larger community and a productive part
15 of it and a patriotic part of the community, as the letters
16 demonstrate as well.

17 In the context of all of this information, it is clear
18 that what we heard here in Court is really the isolated part
19 of Mr. El-Mezain's character and history; that this is really
20 what Mr. El-Mezain is all about. This is the part that is not
21 isolated. This is his entire life. And what we hear in the
22 courtroom in the context of a criminal case is a small slice
23 of what a person is in totality. And the Court has to
24 sentence the totality and not just that small slice that the
25 Court sees. And that is really what *Booker* is all

1 about--returning to the Court that obligation.

2 Mr. El-Mezain's medical conditions, which again I won't
3 go into detail, we have done that in writing, but I have seen
4 them deteriorate over time as I have been visiting him in
5 prison these last six months, particularly his arthritis and
6 the sciatica.

7 I think alone those are sufficient to compel a sufficient
8 below the statutory maximum, particularly because we don't
9 know the nature of what kind of designation will occur. There
10 is essentially a Muslim ghetto at Terre Haute, Indiana where
11 many terrorism defendants are sent, regardless of the fact of
12 the nature of their convictions and the nature of their
13 sentences.

14 I fear that in that kind of restricted atmosphere,
15 because there are special restrictions that apply to those
16 inmates in terms of exercise and access to the outside world,
17 that his conditions will deteriorate further and that each day
18 of prison for him will be far more onerous than it will be for
19 an ordinary defendant in an ordinary situation in an ordinary
20 facility.

21 In comparing this case with other cases, looking at the
22 sentence, and I won't go into detail about *Ali Al-Marri*
23 because Ms. Hollander did, but I think the notion that there
24 is an equivalency there, it just doesn't -- I just don't think
25 it is equivalent to say that a 15-year sentence for someone

1 who is bent on committing acts of violence can be equated with
2 the conduct here.

3 There are other cases, too. The Government is also
4 incorrect. Mr. Al-Marri was not at Guantanamo. He was an
5 enemy combatant held in the United States, and apparently he
6 may well get credit for those six years as part of his
7 sentence as part of his plea agreement, that that is available
8 to the judge to do that.

9 But look at even the people in Guantanamo, Hamdan and
10 Hicks who have been sentenced to five years essentially and
11 are already home and free for conduct, conduct on behalf of
12 Al-Qaeda directly--carrying weapons, driving Osama bin
13 Laden--five years for each of them.

14 So when it comes back to sufficient but greater than
15 necessary, these are the factors that need consideration.
16 And when you think of the message that the Government has sent
17 with this conviction, it does not require additional prison
18 time for Mr. El-Mezain. The message is out there, and the
19 question is for Mr. El-Mezain, given who he is, who he has
20 been, what his conduct was in this case, distinct from other
21 material support cases, his medical conditions, all of that I
22 think compels a sentence of time served or at the very least
23 something very substantially below the statutory maximum that
24 he faces.

25 Thank you, Your Honor.

1 THE COURT: Thank you. Mr. El-Mezain, you are
2 entitled to speak in your behalf. Anything that you wish to
3 state?

4 MR. DRATEL: Your Honor, if I may say in advance of
5 that, after watching Mr. Abu Baker, we have sort of rehearsed
6 this. I think it is going to be between 15 and 20 minutes. I
7 ask the Court give him the opportunity -- We have obviously
8 spent less time --

9 THE COURT: I gave Mr. Baker in essence 20 minutes.
10 He didn't take it, but he used 15 and I gave him an extra
11 five, so 20 minutes we can live with.

12 MR. DRATEL: If he goes 30 seconds over, I hope the
13 Court will accommodate him in that regard.

14 THE COURT: Certainly.

15 Mr. El-Mezain?

16 THE DEFENDANT: In the name of Allah, the most
17 gracious, the most merciful, good morning, Your Honor.

18 I start my speech with what Prophet Moses, peace be upon
19 him, said in the holy Quran, Chapter 20 Ta Ha, verses 25 to
20 28: "Oh, my Lord, I ask you to fill my heart with peace and
21 wisdom. It is my task for me, and remove the impediment from
22 my speech so they may understand what I say clearly."

23 Your Honor, this is a difficult day for me, my family. I
24 sat through two trials listening to videotapes, tape
25 recordings, reading evidence, watching videos. It is not easy

1 to be a spectator when your life is at stake.

2 Nevertheless, today is a remarkable day for me, for my
3 life, for my family, the eight million American Muslims, and
4 the history of American justice.

5 I Mohammad El-Mezain, a Muslim born in Palestine and
6 raised in a modest family. My 105-year-old father, my
7 105-year-old father and my 95-year-old mother have raised me
8 throughout my childhood as a righteous person who devoted
9 himself to serving his family and community.

10 I lived 19 years in Palestine, went to university for
11 five years in Cairo, Egypt, worked another five years in the
12 United Arab Emirates, and for the last 20 years I lived in the
13 United States, where I earned my Master's degree and very
14 close to completing my Ph.D.

15 Your Honor, I would like to thank Almighty God that
16 throughout my life I gained no enemies and I have never been
17 in violation of the law. I certainly kept away from crime and
18 related activities.

19 I believe Your Honor has received and perhaps had an
20 opportunity to read hundreds of letters addressed to you by
21 members of the community nationwide, narrating their
22 experience with me and citing some of my qualities.

23 I acknowledge the Jewish delegate, even though, of
24 course, I disagree with it. But that is not what today's
25 proceeding is about. It is about a just and appropriate

1 punishment for the conduct that I have been convicted of.

2 No one disagrees that I was a founder of the Holy Land
3 Foundation, and that I fully supported its mission for
4 providing aid to the needy, not only in the West Bank and Gaza
5 but also the many the United States, and everywhere our
6 charity was needed and could reach. We never wavered that
7 from that mission, and it is more important to me than any
8 political -- It was more important to me than any political
9 agenda or goals.

10 I am a religious person, and as an emam for over 30 years
11 what motivates and guides me are religious principles, family
12 principles, and social principles regarding what is acceptable
13 conduct, and on all three levels I believe the work of the
14 Holy Land Foundation was right and successful.

15 Your Honor, my awareness and interest in the charitable
16 work picked up at such a young age when I was about 10 years
17 old. Like all other Palestinian refugees, my family lived in
18 a refugee camp in Khan Yunis in Gaza Strip after we were
19 driven out from our homeland in Palestine in 1948. Like
20 everyone else, we suffered from severe shock, depression, on
21 top of poverty and humiliation. We waited desperately for the
22 United Nations to hand us our monthly food parcel, some marked
23 as gift from the people of the United States to the
24 Palestinian refugees, not for sale or exchange.

25 However, we remained malnourished as the food was still

1 not enough. Some unfortunate families were served meat only
2 once or twice a year. Families were banded together in one or
3 two small rooms that were forced to accommodate five to eight
4 people, regardless of their basic human and private needs.

5 We endured a life without electricity, running water,
6 proper sewage system. Many of the people ran in the streets
7 barefooted with worn out clothes. We have had the firsthand
8 experience with poverty, alongside the orphan, the poor, and
9 the needy, and the elderly.

10 For the United Nations and the world, those humanitarian
11 aids were meant to ease the suffering of the Palestinian
12 people who lost their homeland to Israel in 1948. The
13 Palestinians expressed appreciation to the United Nations and
14 to the United States, and I grew up to share their gratitude
15 to the helping hand.

16 The love of charitable work for the poor and needy and
17 the orphan was seeded in my heart as a part of my upbringing,
18 my religious teaching, and my observations as how charity
19 affects the life of the needy.

20 I have become proud of my role with the Holy Land
21 Foundation as our work expanded and started to reach the needy
22 all over the world. We have saved human life in Lebanon,
23 Jordan, Egypt, Turkey, Bosnia, Albania, Mozambique, and in the
24 other parts of the world. We have responded to the tragic
25 bombing of Oklahoma City in 1995.

1 We have always acted as a proud American charity, with
2 full respect and adherence to the law. We have not engaged in
3 promoting violence, much less advocated terrorism. This is
4 why when the laws were changing in 1995, we were careful not
5 to break the law. That is why so much of the Government case
6 was before Hamas was designated as a foreign terrorist
7 organization.

8 Unfortunately, the Holy Land Foundation and my role in it
9 was not fully shown. The Court needed to know about lives we
10 saved and enhanced throughout our humanitarian work--the
11 hundreds of thousands that received our food packages and
12 financial aids, the countless men and women and the children
13 that benefited from our social services, our health services,
14 and community improvement. We did it all in the name of
15 America, under the American law.

16 We gave the same people, Your Honor, we gave the same
17 people and the same -- unto the same organization that the
18 United Nations and the world community gave to.

19 Your Honor, the Holy Land Foundation was no different
20 than any other religious charity, whether it is Catholic or
21 Methodist or Jewish or Baptist charity. They all give and
22 continue to give to the needy and the orphans, regardless of
23 who they father or mother were.

24 But our situation at the Holy Land Foundation, as the
25 largest Muslim charity in the United States, is unique

1 because, to my knowledge, never before have officers of a
2 charity been prosecuted for giving aid to the poor and needy.

3 Your Honor, we believe in America as the land of
4 abundance, the land of the free, and the land of the
5 Constitution. I think Israel's invasion into the Gaza Strip
6 earlier this year shows that we were doing the right thing at
7 the Holy Land Foundation.

8 For many, Gaza Strip may be thousands of miles away, just
9 some brief glimpse on the TV news or a footnote in the
10 newspaper, but it is very close and personal, personal for me.
11 My family still lives there. My aged parents, my brother and
12 my sisters, as well as hundreds of other relatives, they were
13 trapped there during the invasion. I have not seen them, Your
14 Honor, for 24 years.

15 Your Honor, the victims that were shown on the news and
16 in the newspapers are the same people we at the Holy Land
17 Foundation were dedicated to help. So many of the people
18 affected were civilians, yet they suffered so greatly. It is
19 those people who the Holy Land helped through its existence.

20 Just because the cameras and the reporters were not there
21 does not mean they were not in need. I think that was clear
22 from the evidence of the trial, and that is why we helped
23 them.

24 I am particularly proud of the Dar Salam Hospital, which
25 was an actual project Khan Yunis, south of Gaza, where I grew

1 up and my family lives there. I am sure during the invasion
2 it was vital to treating the sick and wounded. That makes me
3 proud. But it also makes me sad, because since 2001 we were
4 unable to provide for the needy like we were before.

5 Your Honor, regardless of the verdict and the upcoming
6 sentence, I hold strong my belief in the Constitution and the
7 ultimate justice. I hope and pray to receive the ultimate
8 justice today.

9 Your Honor, while exercising your duty to sentence me
10 today, it is important to remember that all of us, along with
11 all the entire universe, shall gather again on the day of
12 judgment, the day when Almighty God will bring us all before
13 him and hold us all accountable to our deeds, right and wrong.

14 I believe I am innocent and I have not committed any
15 crime.

16 To the audience, thank you for believing -- To the
17 audience, thank you for coming today to the court, and thank
18 you for believing in the judicial system of this blessed
19 country.

20 To those who believed in my innocence from the Muslim and
21 non-Muslim community, thank you for your moral support.
22 Please do not be discouraged. Continue your work for justice
23 and charity. Love this country even more and cherish its
24 Constitution.

25 To the American-Muslim community here and in San Diego,

1 California, the Dallas metropolitan area, New Jersey,
2 Illinois, and nationwide, thank you for standing beside us and
3 asking about us. Thank you for sending your letters to our
4 Honorable Judge. Thank you for asking about our family.
5 Thank you for praying to us in the day and in the night. We
6 feel your prayer. And your prayer, that Allah will accept
7 your prayer.

8 You face a huge challenge today. Do not be discouraged.
9 Do not give up your Constitutional rights, including the
10 giving of charity; charity which is also a part of our
11 religion, especially the giving of the zakat. You are a
12 beautiful part of this American culture. You are a great
13 addition, not a burden. You are not alone. Righteous
14 Americans of all religion and groups stand with you.

15 To my dear parents, thank you for raising me as a
16 righteous man; a man that gave and received love; a man to the
17 best of his ability knows right and does it, and knows wrong
18 and avoids it. Thank you for keeping up and putting up with
19 me, despite the 24 years of separation due to the illegal
20 occupation of Palestine by Israel.

21 Please, my parents, forgive me, please forgive me for
22 your emotional stress, and to pray for me, my wife, my
23 children, and my grandchildren. We need your prayers. It is
24 so powerful. I am sure your prayers will not go unanswered.

25 To my dear wife Fatima El-Mezain Um Ibrahim, thank you

1 for unconditional support of me and the family in Gaza and in
2 the States. My love and respect for you only increased during
3 our 30 years from a blessed marriage.

4 Today is a difficult day for you. It is a difficult day
5 for all, especially you. Please do not be shaken by the pain
6 of the moment. Do not allow your big heart to be broken on
7 this day or any other day. Allah will ease our difficulty.
8 Allah Almighty said in Chapter 94 Al-Inshirah, verses 5 and 6,
9 "So, verily, verily, with every difficulty there is a relief.
10 Verily, with every difficulty there is a relief."

11 And I hope that soon I will be home next to you and to
12 the children. Thank you for being a great wife. And as the
13 mother of eight children and three grandchildren, please keep
14 up your great work you are doing.

15 To my dear children Ibrahim, Abu Bakr, Omar, Othman, Ali,
16 Emam, Salsubil, Tasnim, my son-in-law Petri, my
17 daughters-in-law Wileh, Browa, and Bushera, and my grandsons
18 Erdam and Jashnim (all phonetic), thank you for all your
19 unwavering support and love to me and to the family in
20 Palestine and in the States.

21 It is your destiny to be separated from your father.
22 Please have strong faith, endure patience and perseverance.
23 I am proud of all of you. Today more than any other day you
24 should feel proud of me and my Eid and my achievements. We
25 have been through as much as we could to lead a happy and

1 righteous life. Please stay the course. Keep your head up
2 and your spirits high. Love and support each other and your
3 mother, your family, your blessed country the United States
4 and Palestine.

5 To my attorney Joshua Dratel and all his team, thank you
6 so much for all your efforts and support to me, and I would
7 like to thank all of our Defense team.

8 Finally, Your Honor, I believe my mission is still not
9 finished. My natural place is among my family and my
10 community. I need them as much as they need me. I want to be
11 able to continue my role in advancing moral values to the new
12 generation, and to teach the young and old about the goodness
13 and success in the life and in the hereafter.

14 I had heard that President Obama wants to spend \$900
15 million in aid to rebuild Gaza. I would like nothing more
16 than the opportunity to participate in the relief that will
17 provide aid and hope of the future to many needy people.

18 Your Honor, as God saved Moses and his followers and made
19 them across the sea to the safety with a strike of Moses'
20 cane, I hope the Almighty God will open the road for me and my
21 honorable brothers to the safety and freedom. Because to
22 Almighty, feeding the children, orphans, and needy families is
23 never a crime. Allah said in Chapter 76 Al-Insan, verses 8
24 and 9, "They give food for the love of Allah to the needy, to
25 the orphan, to the prisoners, saying, 'We feed you for the

1 sake of Allah. We do not want any award from you nor any
2 thanking.'"

3 I would like to end by recalling the advice of my father
4 that Your Honor had heard in the court and that still rings in
5 my ears, deep in my heart, when he quotes from verses from the
6 holy Quran Chapter 21 verses 111 and 112 after he said to me,
7 "Mohammed, do not worry, nor be afraid." And he reminded me
8 and described how everyone would be held accountable to the
9 result of his deed in the day of judgment, and he recites,
10 "All faces shall be humbled before the Living One, the All
11 Sustainer. He will fail who bears the burden of wrongdoing,
12 but whoever works of righteousness and has faith will have no
13 fear of harm and will be rewarded to the full."

14 Thank you, Your Honor. God bless you. God bless
15 America. And God bless and bring peace and safety to the Holy
16 Land. Thank you.

17 THE COURT: Thank you.

18 Mr. Jonas?

19 MR. JONAS: Yes, sir. Thank you.

20 Your Honor, not surprisingly, comments of Mr. Dratel and
21 Mr. El-Mezain try to portray the Defendant El-Mezain in a
22 beneficial light, benevolent light. And Mr. Dratel said that
23 the evidence in this court showed isolated behavior sort, of
24 just sort an isolated portion of who this person is.

25 I would take issue with that. I think what we saw is

1 evidence of the Defendant's true nature and his lifeblood in
2 supporting Hamas starting from the late 1980s up until the
3 time the Holy Land Foundation was shut down.

4 I think the Defendant El-Mezain is a passionate man, as
5 evidenced by this speech and as evidenced by the videotapes we
6 showed that show him fundraising on behalf of the HLF, raising
7 funds that he knew were going to be used for Hamas.

8 I wanted to point out briefly just a couple of pieces of
9 evidence that underscore my point about this Defendant.

10 First of all, there was one videotape we saw where the
11 Defendant is accepting donations from the crowd, and he
12 accepts and announces proudly a donation that he received from
13 Hamas. Or for Hamas. Sorry, for Hamas.

14 There was another speech, and I believe this was
15 Government's Mushtaha Search No. 1, where he is on stage and
16 he invokes the spirit and the statements of Abdullah Azzam,
17 where he talks about being and working with Abdullah Azzam
18 before he was killed and cites a speech that Abdullah Azzam
19 gave.

20 Well, if Your Honor remembers, we played about three
21 videotapes from Abdullah Azzam that were seized from the Holy
22 Land Foundation. This is the individual who was very fiery
23 and had a lot of violent rhetoric in his speeches. And during
24 that violent rhetoric, he talks about providing money to
25 support the fighters of Palestine, and at that time on the

1 screen came "Send your donations to the Occupied Land Fund,"
2 the predecessor name for the Holy Land Association.

3 So the HLF and this Defendant El-Mezain were invoking the
4 spirit of this individual, who was very violent, whose life
5 was to support violence, in their fundraising activities. So
6 when they say they are not engaged in promoting violence, that
7 is not exactly true.

8 The third point I want to make, the Defendant talked
9 about they weren't breaking the law and they tried to follow
10 the law. Well, let me remind the Court of a phone call that
11 we played where the Defendant El-Mezain was talking to the
12 Defendant Odeh. This was right after Hamas was first
13 designated. I can't remember with it was the '95 or '97
14 designation. It was the '95 designation. And they were
15 talking about money, cash that Odeh had that was raised in New
16 Jersey and what he should do with it. And El-Mezain
17 instructed him to structure that cash, deposit it in the bank
18 accounts in denominations less than \$10,000 to conceal its
19 existence.

20 So this benevolent, law-abiding individual that they are
21 trying to paint and portray before Your Honor is not true, and
22 it goes contrary to the evidence that this Court and this jury
23 heard.

24 Mr. Dratel and Defendant El-Mezain talk about charity and
25 how other charities gave to the same organizations and how the

1 HLF is no different than any other charity. That is not true
2 either. Other charities don't intentionally and willfully
3 support Hamas. The HLF did. As Your Honor already
4 acknowledged, they were created for and by Hamas.

5 As they said in Philadelphia, they must show one face to
6 America which is different--of course I am paraphrasing--which
7 is different from the true nature. As Ms. Shapiro said,
8 quoting Shukri Baker, "War is deception." And what they did
9 is they concealed their true aim and their true nature to
10 America. They concealed their support for terrorism because
11 they knew if they revealed who they really were, even before
12 Hamas was designated, that people would not give to them. No
13 one wants to support a terrorist organization or an
14 organization supporting a terrorist organization.

15 What they did instead to the American people was they
16 encouraged donations under the guise of charity. They
17 basically highjacked the generous laws of the United States
18 and encouraged people to make donations by making those
19 donations tax deductible. And the Defendant El-Mezain, as we
20 have shown in several videotapes, said to the audience, "These
21 donations are tax deductible."

22 So what they did was they hid behind charity, they took
23 advantage of charity, and they took advantage of this
24 country's good nature and support of individuals who need
25 money. And in doing so, they hoodwinked this country, led by

1 this Defendant and the others.

2 And the fact that this Defendant is capped at 15 years,
3 it is a benefit for him. He got lucky, Your Honor. Let's
4 face it. His conduct warranted conviction of every single
5 count that he was originally charged in, but he got lucky by
6 being acquitted on the other counts and only being convicted
7 of one.

8 And we ask that Your Honor sentence him to the statutory
9 maximum of 15 years.

10 THE COURT: Thank you.

11 Mr. Dratel?

12 MR. DRATEL: Thank you, Your Honor.

13 As expected, the Government does not address any 3553(a)
14 factors. They don't address Mr. El-Mezain's background, they
15 don't address the medical, because they can't. They are bound
16 by policy. They only want to talk about the offense, the
17 offense, the offense, the Guidelines, the Guidelines, the
18 Guidelines. It is a one-dimensional approach to a
19 multi-faceted process. It is an attempt to reduce the
20 Defendant to only the offense of conviction. That is
21 precisely what 3553(a) and *Booker* have relegated to the
22 dustbin of history. That is not sentencing. It is about the
23 whole person.

24 That last remark by the Government I think is astonishing
25 that Mr. El-Mezain got lucky. We sit here acknowledging the

1 jury's verdict. We will be appealing. But for the Government
2 of the United States, particularly in light of the statement
3 by Attorney General Holder that Ms. Hollander repeated twice,
4 to take a jury's verdict on 31 of 32 counts and say he got
5 lucky, it is the Government that got lucky that one count
6 remained to be tried. And that is the count that the Court
7 has to sentence on, and I have said what I need to say, Your
8 Honor. Thank you.

9 THE COURT: Thank you.

10 Well, considering all of the factors, the 3553(e)
11 factors, and understanding your request for downward departure
12 based on the Defendant's health and, Mr. Dratel, as well as
13 what you claim is an offense that is outside the heartland of
14 ordinary material support case, I disagree with that. I don't
15 think the evidence shows that. I think the evidence shows, as
16 I stated previously, that Mr. El-Mezain, you were involved at
17 the very beginning with the creation of the Hamas Palestine
18 Committee here in the United States, and you were involved
19 with the creation of the setting in motion the apparatus to
20 support Hamas. The financial arm of that was Holy Land. You
21 were a part of that from the very beginning. The evidence
22 shows that you continued that even after it became illegal.

23 I have already stated, and then Mr. Jonas has also
24 reiterated some of the evidence, the videos, the phone
25 conversations that were played that indicated the violence

1 against the Israelis, the Jews, killing Jews, and your
2 support, your ardent and really not hidden support of Hamas.
3 That is what you were about. So your function I think in life
4 was raising money to support Hamas.

5 You know, you stated in here that in fact it was to help
6 people, but I think the motive was to support Hamas, and part
7 of doing that was raising this money for charity and helping
8 people.

9 You state that you are innocent, not guilty of any crime.
10 I think the evidence shows the opposite. I think it shows to
11 the contrary--that you are in fact guilty, as the jury found
12 you were guilty. You are guilty of this offense that is
13 alleged in Count 1, and you were a part of this, and were a
14 part of it from the beginning until the Government closed it
15 in 2001.

16 And so I don't find that there is -- Considering the
17 3553(e) factors, and also considering that the Guidelines are
18 advisory I could depart -- not depart, but sentence anywhere
19 below 15 years that I thought was appropriate, but I don't
20 think it is appropriate in this case on the facts of this
21 case.

22 It will be the judgment of the Court, Mr. El-Mezain, that
23 you be sentenced to the custody of the U.S. Bureau of Prisons
24 for a term of 180 months.

25 That will be followed by a three-year term of supervised

1 release.

2 I will not order a fine in light of your financial
3 circumstances.

4 Restitution doesn't apply.

5 There is a \$100 mandatory special assessment that has to
6 be imposed in each case, and that will be imposed in your
7 case.

8 Following your release from custody, you will be on this
9 supervised release for three years. You have certain
10 conditions -- If you are not deported from the United States,
11 you have certain conditions that you have to follow. Your
12 Probation officer will go and explain them to you, but among
13 the conditions are that you not commit any other violations of
14 law, whether it be federal, state, or local law; that upon
15 completion of your term in custody, that you be surrendered to
16 an Immigration official for deportation in accordance with the
17 Immigration and Nationality Act.

18 If you are ordered deported from the United States, then
19 another condition will be that you not reenter the United
20 States without legal permission.

21 If you are not deported, then you will have certain other
22 conditions that you have to follow, including not illegally
23 possessing or using any type of a controlled substance;
24 cooperate in the collection of DNA as directed by your
25 Probation officer.

1 Do not possess a firearm, ammunition, destructive device,
2 or any other dangerous weapon.

3 Provide to your Probation officer any requested financial
4 information.

5 And then do not enter into any self-employment while you
6 are under supervision without the prior approval of your
7 Probation officer.

8 And then lastly, if you are not deported from the United
9 States, then following your release from custody you will need
10 to report to the Probation Office in the district where you
11 are released. Report within 72 hours of your release. They
12 will get you started on this supervised release and explain
13 these conditions of supervised release to you.

14 I need to advise you that you have the right to appeal
15 both the conviction, the jury verdict, as well as the sentence
16 I have imposed here today, the rulings that I have made here
17 today.

18 If you don't have the means to hire an attorney to
19 represent you on appeal, we will appoint an attorney to
20 represent you at no cost to you. You will be provided a copy
21 of the transcript of the trial as well as today's hearing, and
22 any other documents that you need rulings that the Court has
23 made during the course of the case for your use in appeal.
24 You can speak with your attorneys about exercising your right
25 of appeal, if you wish to do so.

1 I also need to state that the Court's sentence in this
2 case would be the same whether we were using the 2001 or 2002
3 manual with your sentence capped at 15 years. Under either
4 manual, that is well within the Guideline range that would
5 result, and so the Court's sentence would be the same
6 regardless of the manual used.

7 I also need to incorporate the forfeiture language. The
8 jury found in accordance with the jury verdict --

9 MR. DRATEL: Your Honor, there is no forfeiture
10 count.

11 THE COURT: You were not convicted of the money
12 laundering. Excuse me. So that is not part of this sentence.

13 Mr. Dratel, anything else we need to address?

14 MR. DRATEL: Yes, Your Honor. Just two requests
15 that mirror those made by Ms. Hollander.

16 One is the Rule 38 request that Mr. El-Mezain be
17 permitted to and that the Court recommend that he stay in
18 Dallas pending the preparation of the appeal.

19 And with respect to ultimate designation after that time,
20 that it be as close as possible to his home in San Diego to
21 his family.

22 THE COURT: I will grant the first request and ask
23 that he be allowed to stay here pending the appeal, just for
24 purposes as you explained.

25 The second request I don't generally make unless there

1 are compelling circumstances. I don't see them here, and so I
2 will just leave that decision up to the Bureau of Prisons as
3 to where they will designate his facility.

4 Anything else from the Defense?

5 MR. DRATEL: No, Your Honor.

6 Anything from the Government?

7 MR. JONAS: No, sir.

8 THE COURT: Mr. El-Mezain, you are remanded to the
9 custody of the Marshal to serve your sentence. Good luck to
10 you.

11 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

06/18/2009

10 _____DATE_____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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